

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 15, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 115, 1/5/1999
SB 129, 1/5/1999
SB 27, 1/12/1999
Executive Action: None

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HEARING ON SB 115

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS

Proponents: Claudia Clifford, Montana Dept. of Insurance, Health Policy Specialist, State Auditor's Office

Opponents: NONE

Opening Statement by Sponsor:

SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS. Today for your consideration I have a bill that will help people involved in small business be better able to insure their employees. **SB 15** helps with the minimum participation requirements and standards must be met to be able to participate in small group health insurance plans. Those minimum standards stipulate the specific percentage of employees that must participate in the plan before a business becomes eligible for the plan. The rationale for the participation requirements is to prevent situations in which only unhealthy employees take part in the insurance. This would unfairly prevent insurance companies from spreading the risk. It would require them to pay high medical costs associated with unhealthy employees but prevent them from collecting premiums from all employees. Small businesses frequently can only afford plans with high deductibles commonly \$1000 or more. Often some of the employees in a small business can get better benefits at a much lower deductible from their spouses' plans with another employer. When these employees opt out the count against the minimum participation requirements make it impossible for many small businesses to offer any health insurance at all. An example of this is a small business with eight employees. An insurance company offers the employer a health plan with 75% minimum participation. Three employees opt out because they have insurance through their spouse. The result is five out of eight want the insurance making this 62% of the employees; this does not meet the requirements. **SB 115** solves this problem while at the same time preserving the minimum participation requirements. It allows small employer health insurers to keep premium participation requirements in place but prohibits them from considering as eligible those employees who waive coverage because they have coverage under a different plan. For example, the same business with eight employees is offered the same health insurance plan. Under **SB 115**, if three opt out because they are covered under another policy, the five employees are considered eligible for the minimum participation calculations. The result is that five out of five eligible employees meet the minimum participation requirement. The bill is simple. It takes people who have other options of health insurance out of the equation in determining small group eligibility requirements. It levels the playing field for those people who want health insurance but unable to get it simply because of a statistical problem. I have a handout **EXHIBIT (bus11a01)** that covers **SB 115** very well. The State Auditor's Office will have an amendment to this bill which may help alleviate some of the problems that have cropped up. With that, I will turn it over to them.

Proponents' Testimony: Claudia Clifford, Montana Dept. of Insurance, Health Policy Specialist, State Auditor's Office. I am the health policy specialist at the Dept. and I have held that job about six years. I have received many phone calls over the years from small businesses who are frustrated because they try hard to afford insurance and only 26% of our very small businesses are able to gather the resources to do that. Once they do that, they usually are only able to buy a policy of \$1,000 deductible or more. Those benefits are not generous but it is what they can do. One stumbling block they have run into is the minimum participation requirement that insurance companies have. It is a fair requirement. It tries to encourage healthy individuals to participate in a group and not opt out because they don't want to pay for the employee portion of the premium. We want to keep a minimum participation requirement in law but we want to acknowledge with this bill that some employees may be able to get better benefits through a spouse's plan. This bill says for example that a small group of approximately 10 want insurance and three want to opt out because of better coverage opportunities. When the participation requirement, which is often 75% or more, is calculated, only the rest of the group (seven) is considered in the calculation. I do have one amendment **EXHIBIT (bus11a02)** and this acknowledges the concerns insurers have about groups of two. They feel that with a group of two, one person may try to get an individual policy. Groups of two are guaranteed to be issued coverage regardless of their health history. So there is an opportunity for some consumers to take advantage of that guarantee issue which leads to what is called adverse selection or companies having to take on unhealthy lives that are hard on their business. We are offering an amendment that narrows this bill to groups of three or more. So with a company of two employees, this would mean that both would be kept in the group. I encourage your support of this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: SEN. STANG said "thank you". This bill will make it easier for some people to get insurance and will also make it easier for small businesses to offer insurance to their employees. Again, thank you for your consideration.

{Tape : 1; Side : A; Approx. Time Counter : 9.5}

HEARING ON SB 129

Sponsor: SENATOR B.F. "CHRIS" CHRISTIAENS, SD 23, GREAT FALLS

Proponents: Claudia Clifford, Health Policy Specialist, Montana
Dept. of Insurance, Auditor's Office.
Edward Donahue, Insurance Dept.

Opponents: Dirk Visser, Intermountain Administrators
Scott Asay, Employee Benefit Management Services,
Billings
Jerry Driscoll, MT Building & Construction Trades
Council.

Opening Statement by Sponsor:

SENATOR B. F. "CHRIS" CHRISTIAENS, SD 23, GREAT FALLS. I bring before you this morning SB 129 which is at the request of the Insurance Commissioner. This particular bill regulates the issuance of stop-loss or what is commonly referred to as excessive loss insurance and it will be based upon certain levels to entities other than insurers, health service corporations or health maintenance organizations. Mr. Chairman, there are people here who can explain this bill in detail. I would ask for the opportunity to close.

Proponents' Testimony:

Claudia Clifford, Health Policy Specialist, Montana Dept. of Insurance, Auditor's Office. The bill that you have before you deals with stop-loss insurance. I appreciate that some of you may never heard of that. Essentially, it is insurance issued to groups that are self-funding. It doesn't directly pay claims to providers. It is a back-up insurance for a plan that is self-funding. It prohibits the sale of stop-loss insurance below a certain level. The reason that we are introducing this bill is because we feel there is a significant financial risk that is taken by groups when they self-fund. They need to understand that financial risk. We feel it is a risky proposition for groups to begin to buy what are called lower levels of stop-loss coverage. When a group buys stop-loss, they usually buy it based on individual claim thresholds or group claim thresholds. An individual claim threshold, which is also technically referred to as attachment points, means that once they reach a certain level in claims, the stop-loss coverage starts to cover those claims. So on an individual basis, when your claims reach \$15,000 or more commonly, groups will be the \$25,000 level, the policy starts to cover and reimburses the plan itself for its losses. On a group basis, you can sell it as well or on a combinations thereof. This bill prohibits the sale of any form of stop-loss coverage

with an attachment point below \$15,000. We did have a carrier start to market to smaller groups in Montana with plans of a \$5,000 attachment point; meaning that once they reached \$5,000 worth of loss on a claim, the policy would start to pay out. Why is that a problem, you might ask. The problem is the risk that the group is taking. Stop-loss coverage is not guaranteed renewable. Carriers can cancel it. You as the employer have your plan and you have guaranteed benefits to the employees in your group. If you lose your stop-loss coverage, you are stuck with every cost thereafter. Some stop-loss policies have a run out provision, but others don't and you still have a plan with guarantees to take care of the health benefits of your employees. This is addressing the financial risk that is taken by smaller groups that don't realize what that risk is and may not have the financial resources to deal with a situation if they were to lose their stop-loss coverage. Groups are tempted to self-fund because stop-loss rates are low. But again, for many groups it is more appropriate for them to be buying fully insured products. That is what you would consider going out and buying a health insurance plan. It is fully insured. The day that plan ends as the employer, your obligation to the employee ends if you were to end that coverage. In our fully insured market, which is what most of our small employers buy, those plans are guaranteed renewable. It is a less risky situation for the employer.

Opponents to this bill are going to assert that our federal district court may not uphold this law because of conflicts with the federal law called ERISA. This issue has been thoroughly considered by our attorneys in our office. We have reviewed cases in other states. Our district courts have not considered the issue. This bill is different from the bills that have problems that have had problems in other district courts. We feel we do not have those problems. This bill is not prescribing what benefits must be in a self-funded plan. It is not dictating to self-funded plans what they must do or not do in terms of their benefits. It is merely regulating the issuance of stop-loss coverage. I appreciate that this is a rather obscure issue for some not in the insurance business. I do encourage your approval of this consumer protection bill.

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Ed Donahue, Insurance Agent, Missoula. I came over to give a perspective from the consumers point of view. Having been in this business quite a long time, we have many onerous mandates here in the State of Montana which require our health insurance rates to be higher than in other states. An example, two years ago there was a company domiciled in Idaho. They had Idaho Blue Cross. They opened a plant in Missoula. All was fine at first because they had single men working for them. But they hired a

young woman who had planned to have a child at some point. They tried to get a comparable plan from Blue Cross/Blue Shield of Montana since they did not have a maternity benefit in their plan and it was mandated here in Montana. The rate of the Idaho plan for the similar plan in Montana was \$85 per person. In Montana, because of all the mandates, it was \$125 per person. With a bill like this, you could get people who are good risks, going into self insured plans, and may not be subject to all the mandates that the fully insured carriers have to abide by. I am speaking for the bill because I am afraid that many of the people insured under fully insured plans in the 2 to 50 group are going to slip off to self insurance, leaving the other carriers holding the bag. We are in a position where many companies have abandoned the State of Montana as far as group health insurance goes because of unisex and other mandates. I am concerned that if we have more situations here where some of the good insureds are going to go off into self insurance in the small group area, what is going to happen to the carriers that are left. They may feel that they are saddled with the risks that are not as good. And no matter who it is, whether Blue Cross or anyone else. They are going to have to raise their rates to the point where it may become unaffordable. I have groups right now who are renewing and the family rate is \$950. We are seeing trends of 14 to 15% inflation. Salaries are not going up that high. Someday the lines are going to cross where we are facing health insurance costs that will be greater than what salaries are. My concern is that if we have this escape hatch, we are going to lose some of our good groups to self insurance. The fully insured plans will be left holding the bag and the rates are just going to go up where people can't afford it.

Opponents' Testimony:

Dirk Visser, President/CEO, Intermountain Administrators. They are a third party administrator with offices in Missoula and Billings. **Mr. Visser** challenged the bill and submitted a letter **EXHIBIT (bus11a03)** written to **Ms. Clifford** stating his opposition to the bill and requesting answers to some of the points that he felt were especially inadvisable. He was also standing for a number of different companies that they serve that have chosen to fund their employee benefit plan through self-funding. They are Tri-Con Timber; Boise Lumber Co.; Carl Tyler Chevrolet Vans, Anaconda/Deer Lodge County; Tongue River Lumber; Quality Supply; Eagle Stud Mill; AVCO; Northern Cheyenne Pine; Earl's Distributing; Bonner School Dist.; Rocky Tire; Cel-Way Corp.; etc. He further stated there are a number of well-educated and informed employers who have chosen to fund their plan in a manner that best suits their business purposes. He hoped that the committee would table the bill. It is not necessary or needed.

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Scott Asay, Employee Benefit Management Services, Billings. He presented his testimony and handed in **EXHIBIT (bus11a04)** as written testimony.

Jerry Driscoll, MT Building & Construction Trades Council.

Construction workers have MEWAS (?) (multi-employer welfare arrangement). You might work for three or four different contractors in a year. They pay the premium based on hours worked. It goes to a third party administrator and we have to have re-insurance. Our attachment points are higher than this bill but what happens in the future? We have to have re-insurance because the employer pays by the hour. And then his liability is gone. You may be working for another person when you get sick, but your hours were worked for a different contractor and he doesn't want the liability. We have to have re-insurance. So if you pass this bill, does the number keep going up and up and put us out of business. I hope that you will not pass this bill.

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Questions from Committee Members and Responses:

SENATOR MIKE SPRAGUE asked **Ms. Clifford** to respond to some of the comments that asked why this bill was necessary. **Ms. Clifford** answered that the State is bringing this bill as a financial protection for very small groups. Small groups are being tempted to look at policies with \$5,000 stop-loss attachment points and they also look at fully insured plans with \$5,000 deductibles. Their concern is that those businesses are not realizing the financial risk they are taking when they self-fund. That stop-loss policy isn't necessarily guaranteed renewable. Companies can cancel those policies on short notice. Mr. Donahue had dealt with a group in Missoula who had their stop-loss policy canceled. It had been a significant financial problem for them. These are the kinds of cases that they are trying to address with this bill. The NAIC (National Association of Insurance Commissioners) have a model act. They have set their minimum attachment point at \$20,000. The State has proposed this bill at \$15,000 because there might be some groups in Montana that are willing to take a bit more risk. **SEN. SPRAGUE** continued by asking that sometimes in small businesses that when they can get a policy to make a bad decision, it might encourage that decision. In other words, is the State afraid that by having a stop-loss policy, there may be some small businesses who will say I have the insurance so that if I am underestimating my decision I still have this protection. Consequently, with the naivety that insurance will cover them and

then later they dropped it, they have already gotten themselves into it. Does this encourage a bad business decision?

Ms. Clifford replied that this is correct. If they don't have the financial resources to deal with the self-funding aspect of their obligation even when they have a stop-loss or thereafter if the stop-loss is canceled, they still have that promise to their employees so cover their health care costs and suddenly they don't have the stop-loss coverage. It is a risky endeavor all around for a business to self-fund. They are trying to discourage the situations where smaller, leaner financially solvent businesses are taking some risks that they may not be realizing.

SEN. SPRAGUE asked if any opponent of the bill would respond to **Ms. Clifford's** previous answers. **Mr. Visser** said the argument that was presented presumes the business doesn't know what is good for themselves on the one hand. On the other hand, he said his company has been doing administration on behalf of self-funded employers in this state for 20 years. They currently have 65,000 people in this state that they have paid claims for. They have never had anyone have a policy that has been canceled or not renewed. So that is a perspective that is a fact in this industry. Could it happen? Certainly. But he also has run across a number of groups who are their clients because they renewal premiums were so high they had no choice but to look for an alternative in the market place. And in regard to the renewable issue, the fully insured market does have guaranteed renewable in the small group field. So if one does accept the argument that the possibility that a stop-loss insurance policy could be canceled, the group can go to guaranteed renewal in the small group field. They do have alternatives. He felt that if the Dept. is truly concerned about guaranteed issue or renewability, that should be the question on the table--not what the stop-loss level is. To tell a group that they have to take a \$15,000 stop-loss when they might want a \$5,000, goes in opposition to their stated purpose. It is forcing additional risk on the group which may be the idea to force the groups into another alternative that they have some agenda with regard to. Also, ERISA has gone all the way to the Supreme Court in other districts and circuits and has been held to be invalid.

SEN. VICKI COCCHIARELLA asked if a small employer who is now self insuring had the stop-loss level changed, would it be possible he would not be able to self insure. **Dirk Visser** said it was; yet again the decision to self-fund is always relative to the employer's circumstances and abilities. Self insuring is not for everyone because you have to understand what you're doing and understand the risks involved; however, there are some advantages. Currently, from 40 to 60% of the employer

marketplace is self insured in one form or another and has been for a number of years.

SEN. COCCHIARELLA said it was apparent there was some protection issue for small employers but there was also an appearance of pressure to force to the fully insured business side. Am I getting that perception correct? **Dirk Visser** said she was and again it goes back to if the decision is appropriately left to business to make for themselves. Quite frankly, not a lot of small businesses in Montana are self insured and the reason is it isn't economically feasible for them to do so. The lower the stop-loss the more expensive it is, and the lower the stop-loss, the more the stop-loss premium comes in line with the fully insured so there's a risk reward thing. We don't have any groups that we administer who have a very low stop-loss, like the insurance department was referring to, because economically it isn't feasible for them. The vast majority of small groups of 20 to 50 employees will be fully insured because of the economics of the situation. My argument is it's a business choice, a voluntary issue with regard to business -- benefits are anyway -- and the business will hopefully understand this risk as well as any other business risk and make appropriate decisions for their company.

SEN. GLENN ROUSH asked the position of the Auditor's Office of reducing the level to \$10,000. **Claudia Clifford** said we proposed it at \$15,000 because the NEIC model was at \$20,000. If you lower it to \$10,000 it does still help discourage very small businesses from making the bad business decisions so I'm not sure we'd really oppose lowering it to \$10,000; however, we thought this was a financially prudent level at which to introduce the bill.

SEN. ROUSH said opponents' testimony said **SB 129** was not necessary because it would be preempted by federal law. I would like your opinion on that. **Ms. Clifford** said our attorneys extensively considered that issue; in fact, we read some court decisions. But they feel firmly we have a different approach. The insurance department is allowed to regulate stop-loss insurance. We do in other ways. They license as carriers, etc., we review their financial solvency. This is just another way or regulating the stop-loss business.

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Closing by Sponsor:

SEN. B.F. "CHRIS" CHRISTIAENS. I think this has had some good dialogue but I would also tell you that in most situations when you have third party administrators, the employers they represent are generally not those in the 2-50 employee range. This bill, in Section 3, Page 2, talks about what that attachment point is: (1) \$3,000 times the number of employees that would help you come to the aggregate attachment point; (2) 118% of the expected claims; or (3) \$15,000. Each of these folks and employers need to be looking at that as to what their needs would be. When you have third party administrators or the self employed groups, the MEWAS as Jerry Driscoll talked about, these are large groups of folks and when ERISA has gone to court in those other states, it's been when you've been talking about the mandated benefits. It has not been in those situations that talk about pure stop-loss. Most of us work in places of small employers -- the majority of businesses in Montana have 15 employees or less.

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If you have a nonguaranteed renewable policy and with stop-loss you only receive 30 days advance notice. It does not run on out and pick up those additional costs that may come in after the fact. I worked for a company which had 150 employees and we had 400+ insured lives. In the first year one of our employees had open heart surgery and we had to pick up an additional \$50,000 in coverage. If our stop-loss had been \$5,000 we still would have had to pick up an additional \$45,000 of additional costs. I'm telling you if you have a small business you are at great financial risk when you start doing this and you have only a \$5,000 stop-loss policy. **SB 129** in its arrangement, when looking at the NAIC model of \$20,000, came down to \$15,000 to help companies deal with it and still keep it fairly inexpensive.

Someone testified that everyone in Montana can get insurance coverage through the Montana Health Insurance Plan but I think most of you have also heard that plan is in severe crisis right now. If there is not a change, and under CI-75 there are some questions as to whether those premiums can be increased or payments by insurance companies, we have nearly 1,200 lives in Montana that could, by June, 1999, be uninsured. Those are the sickest of our population and have been paying premiums in excess of \$700 per month. They may go bare. I'm surprised you haven't heard from some other insurance companies because I believe they believe in this bill as well because it helps them. If they have sold a \$5,000 stop-loss policy and the employer is not renewed, who is going to get the criticism? It will be the company that had the policy. I do not believe **SB 129** has any problems with ERISA in any way because it doesn't affect the mandated benefits of what they're providing.

(CHAIRMAN JOHN HERTEL relinquished the chair to VICE CHAIRMAN MIKE SPRAGUE so he could present SB 27).

HEARING ON SB 27

Sponsor: SEN. JOHN HERTEL, SD 47, MOORE

Proponents: Bill Olson, AARP
Peter Blouke, Department of Commerce
Jerome Anderson, unretired member AARP
Joe Mazurek, Attorney General
Mark O'Keefe, State Auditor
Rich Pavlonnis, telemarketer, Great Falls
Bill Fleiner, Sheriff's Association
Verner Bertelsen, Montana Senior Citizens Assn.
Jane Vincent, Helena
Rep. Dick Haines, HD 63, Missoula
Eileen Miller, East Helena
Craig Sweet, Montana Public Interest Research Group
Margit Hatcher, Victim of Scam
Barbara Ranf, U.S. West
Christiana Schwitzer, Montana Trial Lawyers Assoc.
Greg Van Horssen, State Farm Insurance Company
Susan Witte, Blue Cross/Blue Shield
Mark Baker, AT&T
Chris Gallus, Montana Chamber of Commerce
Geoff Feiss, Montana Telecommunications Assn.
Jon Metropoulos, Farmers Insurance
Jeanne Bauman, Montana Credit Unions League
Alvin Funk, Victim of Scam
Betty Babcock, Victim of Scam, Helena
Annie Bartos, Department of Commerce
Ross Cannon, National Direct Marketing Assn.
Riley Johnson, National Federation of Independent
Business
Ralph Andonno, Magazine Telemarketer, Great Falls
Mike Voeller, Lee Newspapers of Montana

Opponents: None.

Opening Statement by Sponsor:

SEN. JOHN HERTEL, SD 47, MOORE. It gives me a great deal of pleasure to sponsor SB 27, the telemarketing fraud bill and a bill that is vitally needed. There are some Committee members who remember the telemarketing fraud bill that went through this

Committee in 1997 was unanimously tabled because the bill didn't do what it was intended to do. There was a good aspect to come out of that bill -- a resolution was formed and passed the Legislature. The resolution created an interim committee who studied this issue and came up with some solutions to alleviate the problem, i.e. **SB 27**. I would like to briefly walk you through the bill: **Section 1** talks about the title. **Section 2** gives the purpose and rulemaking. **Section 3** deals with definitions. **Section 4** deals with the registration of telemarketers and the qualifications that must be met before becoming a qualified telemarketer. Also, it requires telemarketers to be bonded with a \$50,000 bond. **Section 5** deals with the exemptions. **Section 6** describes the Telemarketers Awareness Program and tells how it will be funded. **Section 7** explains how the Department of Justice will enforce this program, explains the fining process and how the fees will be used. **Section 10** explains the procedure the telemarketers must go through when making a sale to the consumer, what information must be disclosed and the cancellation process for the consumer. **Sections 11 & 12** explain other procedures and practices which are prohibited to telemarketers, i.e. requesting fees or receiving payments in advance, using profane or obscene language, etc. **Section 13** describes what the person who has been acted upon by an illegal telemarketer can do and explains his civil remedies. **Section 14** describes the amount of the penalties against those who have acted illegally as a telemarketer. This penalty will follow what is already established in 30-14-103 & 30-14-111. **Section 15** refers to the codification of the bill -- the statute will be placed in Title 13, Chapter 14. **Section 16** explains the effective date of this legislation would be October 1, 1999. The bill addresses some major concerns, i.e. the bonding and registration of telemarketers, prohibitions (obtaining direct access to credit cards and bank accounts, advanced payments, etc.). It also gives the consumer the cancellation procedure, explains the civil fine enforcement procedure that is available for the con artists, and form & exemption list of those telemarketers who do not qualify under this legislation. You will hear testimony from both the Departments of Commerce & Justice, others who worked on this legislation during the interim and those who have been affected by illegal acts.

{Tape : 1; Side : B; Approx. Time Counter : 14.7}

Proponents' Testimony:

Bill Olson, AARP. He read his written testimony
EXHIBIT (bus11a05).

Peter Blouke, Department of Commerce. I rise in strong support of **SB 27**. The Department of Commerce, through our current Consumer Affairs Bureau, has been very actively involved in working with AARP and other state agencies in crafting this piece of legislation that we believe is very important. I applaud AARP for their effort; however, fraudulent telemarketers do not discriminate and will just as gladly take money from a 20-year-old as from a 70-year-old. Although AARP has been actively involved, there is a need for this bill to cover all of Montana's population. There is a fiscal note attached and it would be a tremendous disservice to the people who have worked long and hard on this bill if the resources are not provided to actually implement the bill. I have to leave but Annie Bartos will be available to answer any questions. I also leave you with a copy of amendments proposed by the Department of Commerce **EXHIBIT (bus11a06)**.

Jerome Anderson, unretired member AARP & Cimarron Corporation, Great Falls. We prepared an amendment **EXHIBIT (bus11a07)** to add to the practices which are prohibited in Section 11. Mr. Pavlonnis, my client, will testify with regard to the reasoning behind the proposed amendment. We would like the Committee to consider the amendment in order to strengthen the purposes of the bill.

{Tape : 1; Side : B; Approx. Time Counter : 24.7}

Joe Mazurek, Attorney General. We too want to add our support for this bill and thank **SEN. HERTEL** for being willing to carry it. It has been a cooperative effort of AARP, other seniors groups, Department of Commerce, Department of Justice and State Auditor's Office. Sometimes it is hard to understand that fraudulent telemarketers are hardened criminals whose purpose is to get money from people for no legitimate purpose; that is what **SB 27** is trying to address. Along those lines, we have circulated a couple of proposed amendments that will clarify the criminal provisions in this proposed bill **EXHIBIT (bus11a08)**. It is important we have legislation like this; there are a number of cooperative efforts nationally among the states. We need laws like this so we can work across state lines and help one another. This bill will allow us to do that. We urge favorable consideration by the Committee. My budget is up in the House Appropriations Subcommittee and Steve Bullock, Assistant Attorney General, will answer any questions on behalf of our Department.

Mark O'Keefe, State Auditor & Insurance & Securities Commissioner. I appear to stand in full support of **SB 27**. It's taken a lot of work by a number of people, agencies and industries to put the bill into today's form. As the Insurance &

Securities Commissioner, one of the programs we created five years ago is the Montana Senior Fraud Protection Network. You have just been given a card on that Network **EXHIBIT(bus11a09)**. In the past two and a half years I have given 85 presentations to senior citizens groups around Montana about insurance and securities fraud, something which is often telemarketing fraud also. We have the authority to regulate and prosecute those individuals who are dealing with securities and insurance. Unfortunately, 90% of the time I would give a presentation, I would have an individual who would have a complaint against a telemarketing company over which we had no authority. We would then refer that and those people to the Department of Commerce or Attorney General's office who did an admirable job of dealing with it under present laws and with the resources they had. Ultimately, those individuals we met out in the field got nowhere with their complaints because the laws weren't there for the enforcement to take place. **SB 27** remedies that. We put together the Senior Fraud Protection Network with AARP and MSCA because 80% of the victims in our office's investigations are seniors; however, the other 20% aren't -- con men will take money from whomever they can. I urge you to pass the bill and to offer my support to the Department of Commerce and the Attorney General's office.

Rich Pavlonnis, telemarketing business, Great Falls. We currently employ approximately 60 people and do annual sales in excess of \$4 million. I'm glad to be here in support of **SB 27** and to add my voice to support the need for strong legislation. We have an amendment **EXHIBIT(7)** which addresses one of the more pressing concerns in telemarketing fraud and essentially want to encourage the passing of the bill. I commend AARP and DMA and others who worked so hard to get it to this point.

Bill Fleiner, MT Sheriffs and Peace Officers Association. We support this legislation on behalf of senior citizens. This is our long standing working relationship we've had with senior citizens through area agencies on aging. We were the first to conduct community and law enforcement training across Montana with regard to elder abuse and neglect. The Montana Sheriffs and Peace Office Officers Association has never been a part of telemarketing. When we campaign for fundraising we send out an annual mailer, and it is done only with each county sheriff's acceptance. We urge your support.

Verner Bertelsen, Montana Senior Citizens Association. We have been very active in fraud prevention programs around Montana, along with the Auditor's Office. We certainly are in strong support of **SB 27** and think it's high time to put an end to the

impunity with which telemarketers are ripping off people. We urge your support.

Jane Vincent, Helena. I am a Montana native, as was my elderly mother who was nearly taken for \$6,000. I urge you to pass **SB 27**.

{Tape : 1; Side : B; Approx. Time Counter : 32.6}

REP. DICK HAINES, HD 63, MISSOULA. I'd like to share some of my experiences. My mother passed away a couple of years ago after 66 years of marriage, which left a big hole in my father's life which consequently made him vulnerable to this type of activity. The first thing that got him into trouble was mail which guaranteed \$10,000 if you send a reply, etc. You might ask what mail has to do with telemarketing fraud. Well, when you answer those kinds of letters, your name goes onto the list; an FBI agent later informed me when your name is on the list, those lists are transferred among different groups in the telemarketing business -- eventually they end up on the "dark side." We became aware of this situation when we noticed the enormous telephone bills for long distance calls made on my father's US West account. (he is a retired telephone employee who gets his calls free -- a typical bill is \$1.49 per month). We were noticing \$200, \$400 and the highest was \$600 per month. I went to US West and was told it was a 900 account and I would have to deal with that firm because all US West does is collect the money and send the billing on. When I called the 900 account, the first thing you get is "all representatives are busy so call a little later". I went through this a number of times and got frustrated with it so started to redial immediately upon receiving the voice message until I finally got a live person. I had to go through three (3) supervisors and a lot of very deep confrontational conversation but finally got some agreement from them to refund some money. What they do is call the victim and say it's a toll free number and if you want to call back, call this 900 number. My father would call them and being deep in grief, he would talk to them for an hour at a time at 90 cents per minute.

The next thing were lottery offers, though by this time I was helping my father with his bills. I noticed he had a Visa charge for \$200 or \$300 and when I tried to find out what it was, I became known on a first-name basis with a number of fraud management firms around the country that handle this for Visa and MasterCard. The biggest one we got was \$5,000. The telemarketers call and tell the person they'll enter their name in the Australian or whatever lottery and they sound like they're legitimate. You give them your credit card number and as soon as you hang up, charges are being issued against it.

Then we got into registered mail which looks very official. However, upon opening it, it's more Australian lottery stuff urging the citizen to send money to be entered in this lottery; as far as I know, there is no such lottery.

Also, I got a call one day from an FBI agent here in Helena who asked me how my father was doing. He suggested I call him immediately and said the UPS man had been there asking for a check for \$125. Later we were in the restaurant when a young man came over to us and identified himself as the UPS driver. He explained what he had done -- apparently as soon as he realized it was a fraud he left my father alone and called the FBI.

We went on to have lots of telephone calls that might tell my father he had won \$2 million or \$3 million; in fact, sometimes he'd call me in the middle of the night so excited he could hardly stand it. I would ask him how much money he would have to send them and he would say \$2,500. I would tell him nobody collects money in order to award a prize. As I understand it from the FBI, these people operate out of a boiler room. They would call my father to offer an opportunity to put this money into an investment which would yield him a lot of money which would make him happy for the rest of his life. Then they'd say they would have Joe Smith from Arkansas call him, when in fact, they'd just hand the phone to the next booth in this boiler room and he would give the same speech, and so it would go.

You have registration and courier pickup in the bill; however, you need to look at something that exempts the telephone company and their agents because of the 900 thing. The best thing you have going in the bill is the Consumer Awareness Program because that's probably the only thing in the long run that will get the citizenry to understand how lethal this is. I would like to see something requiring caller ID and I would also would think you'd want to look at restricting the transfer of lists between businesses, though that might be hard to do at the state level. I will do anything I can to make this bill successful.

{Tape : 1; Side : B; Approx. Time Counter : 40.9}

Eileen Miller, East Helena. She read her written testimony **EXHIBIT**(bus11a10).

{Tape : 2; Side : A; Approx. Time Counter : 0}

Craig Sweet, Montana Public Interest Research Group (MPIRG). We support **SB 27** and want to thank AARP, the Department of Commerce and the Department of Justice for working on the bill. I understand this is the third or fourth Legislative Session this

bill has been considered and during that time, many lives have been ruined by telemarketing fraud. Everyone in this room is a potential consumer and a potential target for telemarketing and consumer fraud. Please support this bill.

Margit Hatcher, victim of scam. I support **HB 27**.

EXHIBIT(bus11a11) is her written testimony.

Barbara Ranf, U.S. West. We have been working with AARP on telemarketing fraud legislation since the 1995 session. Their concerns are addressed in the bill. We support **SB 27**.

{Tape : 2; Side : A; Approx. Time Counter : 6.4}

Christiana Schwitzer, Montana Trial Lawyers Association. We stand in support of the bill.

Greg Van Horssen, State Farm Insurance Company. We support the bill with one minor amendment **EXHIBIT(bus11a12)**. It was the intent of the drafters of **SB 27** to exempt legitimate insurance producers from the effect of this bill; however, on occasion an insurance producer will have an employee make the phone call regarding the status of the product. Our amendment would go to Page 6, Line 18, Subsection 8. At the end of the sentence, include "or employees of the producer". We believe this amendment is within the intent of this bill. I have spoken with the sponsor and AARP and their response is positive. I understand Blue Cross/Blue Shield will be bringing some amendments also -- we support them as well. **Miss Jacqueline Lenmark, American Insurance Association (AIA)** asked me to put her support for this bill with the amendments on record.

Susan Witte, Blue Cross/Blue Shield (BC/BS). I am here on behalf of BC/BS which supports **SB 27** with the amendments suggested by State Farm. We also would like to point out we believe it is the intention of the Committee, under the exemptions of the listed parties in Section 5, to include the rest of the provisions of the bill. We would support an amendment to make sure the exemptions of these parties are exempt from the rest of the provisions of the bill. I think that's the intent of the bill, though we're not sure. But we are willing to submit amendments on it. I also would stick "providing exemptions" in the title.

Mark Baker, AT&T. We do rise in support of this legislation today. I have visited with the chairman about a couple of suggested proposed amendments which we have forwarded to the Committee **EXHIBIT(bus11a13)** and **EXHIBIT(bus11a14)**. The first amendment deals with Section 5, Paragraph 10, where it talks about a telephone company or its subsidiary or agent or other

business regulated by the Montana Public Service Commission. We would ask that language be expanded to include the Federal Communications Commission as well. The second amendment deals with Section 13, Paragraph 2, "attorneys fees and court costs." We're concerned with the language that it may result in protracted litigation or frivolous lawsuits. We would ask that the reference to attorneys fees and court costs be stricken from that section. With those amendments we rise in support of the legislation.

Chris Gallus, Montana Chamber of Commerce. We are here today to support **SB 27** with the amendments just proposed by Mr. Baker.

Geoff Feiss, Montana Telecommunications Association. We rise in support of this legislation. The Committee does have a minor technical amendment to Subparagraph 10, Section 5, dealing with exemptions which are intended to include telephone companies but as drafted does not include telephone cooperatives. So we simply include cooperatives under that **EXHIBIT (bus11a15)**.

Jon Metropoulos, Farmers Insurance. We rise in support of the bill as well as the suggested amendments by Blue Cross/Blue Shield and State Farm.

Jeanne Bauman, Montana Credit Unions League. We support this bill with one (1) minor amendment -- Page 3, Line 8. Add "the United States or of" to be inserted after "agency of." This amendment is needed to included federally chartered financial institutions in this definition **EXHIBIT (bus11a16)**.

{Tape : 2; Side : A; Approx. Time Counter : 12}

Alvin Funk, Himself. **EXHIBIT (bus11a17)** and **EXHIBIT (bus11a18)** is his written testimony. I urge the Committee to pass this legislation.

Betty Babcock, Former Legislator and a Victim. **EXHIBIT (bus11a19)** and **EXHIBIT (bus11a20)** is her written testimony.

Annie Bartos, Department of Commerce. Earlier this morning you heard Peter Blouke testify in support of **SB 27**. The amendments **EXHIBIT (6)** which were passed out at the beginning of the hearing, pertain to Page 7, Line 1, which lists the exemptions. The Department proposes the exemption that pertains to the sale of magazines and newspaper circulation be omitted to allow this act to cover this type of solicitors.

{Tape : 2; Side : A; Approx. Time Counter : 21.5}

Ross Cannon, National Direct Marketing Association. I'm one of the members of the Task Force that worked with AARP, the Department of Commerce, Department of Justice and Bart to see if we could craft a bill that everyone could live with. I appear as a proponent with a couple of amendments **EXHIBIT (bus11a21)**, which I will explain.

Riley Johnson, National Federation of Independent Business (NFIB). We stand in support of **SB 27**, asking you to give very serious consideration to Mr. Cannon's amendment, Section 11, Line E because NFIB is a major telemarketer with memberships all over the country. We do accept credit cards and check drafts on accounts (have done it for years). Since that amendment tracks federal rules we are now presently following, we would ask that it be included. We feel the voice backup that can be produced with that is sufficient and equal to the written.

Ralph Andonno, Magazine Telemarketer, Great Falls. I would like to support the bill as initially drafted and Mr. Cannon's amendment also. One of the things Montana legitimate telemarketers support is the elimination of fraud and we think **SB 27** goes a long way to do that. However, one of the considerations we have with the amendment offered by the Department of Commerce which no longer provides for the exemption of periodicals and magazine sales, is it doesn't consider the effect it will have on the approximate 400 magazine telemarketers in Montana. This law calls for the posting of a surety bond of \$50,000. My insurance agent tells me because of the provision that requires the bond to be in effect for a period of three (3) years after you go out of the business, he didn't know of any surety company who would write that bond and place it in effect - they said it would not be possible. The provision then says if you cannot provide a surety bond, you must provide \$50,000 in cash or a certificate of deposit with the state of Montana and leave it on deposit the whole time you do business in Montana and three (3) years thereafter. Most of us who engage in magazine telemarketing in Montana are citizens of Montana who have been here most of our lives -- we're not the big national conglomerates who can post a \$50,000 bond. For most of us to post the \$50,000 bond and leave it for three (3) years thereafter is tantamount to putting us out of business. I have talked with most of the telemarketers and they say this exemption of us who are subject to the Montana laws and do not commit frauds in Montana but to require us to be covered by these provisions, is tantamount to this Committee taking 400 jobs as of October 1. We don't want that to happen so we would ask your careful consideration to leave Paragraph 13 in the exemption included therein, or allow Mr. Cannon's provision. We do not sell to people under 21 or over 65, or consumers in Montana because it's

a matter of economics. It's less expensive for me to call Lewiston, Maine, than it is to call Lewistown, Montana; or less expensive to call Helena, Texas, than Helena, Montana. **SB 27** is designed to protect Montana's consumers but it would put us out of business by punishing and not protecting legitimate businessmen in Montana. I would ask you to take those aspects into consideration.

{Tape : 2; Side : A; Approx. Time Counter : 30.7}

Mike Voeller, Lee Newspapers of Montana. I don't know if I'm a proponent or opponent or simply shocked at the suggestion by Annie Bartos that the newspaper exemption be removed. I had testified on this bill in the previous two (2) sessions but I was not informed the striking of this exemption was in the works. I'm puzzled why local newspapers in this state would be equated with out-of-state boiler room operations when we certainly are anything but that. I spent a few seconds with Annie Bartos and she said she would talk to the sponsor about the newspaper exemption and I would strongly urge you leave that exemption in place.

Questions From the Committee and Responses:

SEN. VICKI COCCHIARELLA referred to the fiscal note and wondered about the issue of adopting rules by two (2) different entities - Department of Commerce and Department of Justice. She wasn't sure why rulemaking by the Department of Justice was needed.

Steve Bullock said they noted in the fiscal note they wouldn't need rulemaking authority. The way the enforcement is set up is basically to track how they enforced under the Consumer Protection Act. The civil work and injunctions would most likely be brought by the Department of Commerce and the money brought by that would go there as well. It's referred to them upon the Department of Commerce's request or for criminal prosecution.

Annie Bartos said the bill provided for rulemaking authority at the Department of Justice for the provisions relating to the criminal penalty provision. Provisions relating to civil enforcement rest with the Department of Commerce. There may be a need for promulgating administrative rules in terms of what would be necessary in the application or registration of the telemarketers. **SB 27** gives the agency the ability to do that.

SEN. FRED THOMAS asked about the availability of the \$50,000 bond. **Ross Cannon** said in prior sessions this was one of the major difficulties with the bill. He said the Direct Marketing Association supports the bill with the bonding provisions in it, though he sympathized with the small direct marketer because the deep-pocket telemarketers can post letters of credit but the

small direct marketer cannot; if there was not an exemption for the registration requirements, he or she would be out of business.

{Tape : 2; Side : A; Approx. Time Counter : 38.6}

SEN. BEA MCCARTHY commented one of the problems with the bill in prior sessions was it regulated Montana telemarketers but not those out-of-state. She didn't notice that concern addressed in this bill either. **Annie Bartos** said the bill provided for registration and bonding of both in-state and out-of-state telemarketers who wish to engage in business in Montana.

SEN. MCCARTHY asked what could be done to speed up the process of installing caller ID in order to identify the telemarketers. **Annie Bartos** said she wasn't sure the question was addressed to the telephone utility company or the telemarketer who would be contacting the Montana consumer. **SEN. MCCARTHY** said she wanted the name and phone number to show up on the machine. **Annie Bartos** said **SB 27** would not address the caller ID; rather, the telemarketer would identify him-or-herself once on the phone with the consumer.

SEN. MCCARTHY asked for help in reviewing the procedure step by step, i.e. individual makes call to me, tells me they're soliciting, tells me which company they represent and tells me he or she is registered in Montana. **Annie Bartos** said that was the basic information they were required to provide; also, they needed to say they were attempting to make a sale to the Montana consumer on the telephone and are required to tell the consumer they have a three-day right to cancel which will be followed in writing so the consumer can make an informed choice to either keep or cancel the contract.

SEN. MCCARTHY commented according to the AARP TV ads we in Montana are pretty dumb. If I don't ask those questions, what have I got to go for me? **Annie Bartos** said if she didn't ask those questions as a consumer on the telephone, and if the telemarketer fails to follow the above procedure, he or she would be in technical violation of the bill and a complaint would be filed in their office or perhaps with the Department of Justice.

SEN. FRED THOMAS asked if this legislation would make it mandatory to pay the telephone bill if the customer had been slammed on the telephone service. **Mark Baker** said he wasn't sure **SB 27** addressed the slamming issue, i.e. unauthorized change in telephone service. There are recently issued federal rules imposed by the Federal Communications Commission that address the slamming issue. This is an issue for the Legislature and they

are working with other Legislative members as well to address this as the state level.

SEN. THOMAS asked for more clarification.

{Tape : 2; Side : B; Approx. Time Counter : 0}

Steve Bullock said it wasn't because there was already a slamming law which was fully regulated by the PSC. **Kate Whitney, Public Service Commission (PSC)**, said according to the existing anti-slamming law, if the customer has been slammed, payment of the bill to the slammer is not required.

SEN. THOMAS commented there was no reason for the bill to do such and **Ms. Whitney** said the intent of **SB 27** would not affect the slamming law.

Closing By Sponsor:

SEN. HERTEL said from the testimony heard, he was certain all would agree Montana had an immense problem which needed to be taken care of. One of the testifiers mentioned Montana had the second highest per capita rate of callers making telemarketer fraud complaints to the National Fraud Information Center, which indicates Montana has weak telemarketing fraud laws. **SB 27** would greatly help alleviate the fraudulent telemarketers from doing their crimes in Montana. I think this bill will make legitimate telemarketing businesses more reputable and strong.

SEN. MCCARTHY asked about making people aware. We do have that awareness program which hopefully will help alleviate some of your concerns. Committee, there was a tremendous amount of support for this legislation; in fact, at least 64 or 65 legislators signed onto this bill. Also, there are a lot of people who have done a tremendous amount of work on this legislation, i.e. the interim committee worked very hard to get this before us.

The fiscal note shows the Department is asking for 3 FTE's. I am concerned about spending and those FTE's will cost the state budget some money; however, we have to think of the need, which is very evident by the testimony we heard. Sometimes we have to set some things aside and think about what this bill is accomplishing for our Montana citizens.

We do have a stack of amendments which the Committee will carefully consider. I hope the Committee can look favorably to the passage of **SB 27**.

Rene Worley, AARP, Wolf Point, MT submitted her testimony
EXHIBIT(bus11a22) after the hearing.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus11aad)